



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

February 3, 2017

BY ECF

The Honorable Valerie E. Caproni
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Joseph Percoco, et al., 16 Cr. 776 (VEC)*

Dear Judge Caproni:

We write in response to the Court's order dated January 25, 2017, requiring that the Government update the Court weekly with regard to the status of discovery in the above-captioned matter.

I. Discovery Produced to Date

In its initial discovery status letter dated January 27, 2017, the Government advised that it had made available to the defendants approximately 1,745,000 pages of discovery, including emails, phone records, bank records, and other business and government records, as well as forensic images and "processed" data from 22 electronic devices, and the results of all physical search warrants and all but two email search warrants. The Government further advised that, of the discovery material referenced at the initial pretrial conference (what the Government had obtained in its investigation as of December 1, 2016), approximately 85,000 pages, consisting principally of subpoena returns, as well as a limited amount of GPS and pen register data, remained to be produced.

Since January 27, 2017, the Government has made available an additional approximately 15,824 pages of emails from the two remaining email search warrants. Approximately 68,456 pages of material remains to be produced from the initial set of discovery. The Government expects the next tranche of materials, approximately 63,350 pages, will be available for the defense to order from our discovery vendor on or about February 15, 2017, and that the remainder will be available by February 28, 2017. The Government also determined since its last letter to the Court that it had not produced, and is currently processing for production, a small set of materials (approximately 18 emails, 11 photographs and other related files) obtained during its initial investigation from the search of an iCloud account. We expect to produce those materials by March 5, 2017.

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As previously noted, the Government's investigation is ongoing, and the Government will continue to produce on a rolling basis any new discovery subject to Rule 16 of the Federal Rules of Criminal Procedure. Since the date of the first conference, the Government has obtained approximately 16,000 pages of additional documents subject to Rule 16 discovery. The Government expects to produce approximately 8,328 pages of documents (the 2.12 GB referenced in our prior letter) no later than March 5, 2017, and has recently sent the remainder to be processed for production. The Government will produce additional discoverable material it obtains on an ongoing basis.

II. Potentially Privileged Materials

As the Court is aware, the Government obtained, pursuant to search warrants, emails from the personal email accounts of several defendants and other individuals. With the exception of materials withheld as potentially privileged, these emails have been produced as set forth above.¹ The Government, through an Assistant United States Attorney who is walled off from the prosecution team (the "Wall Assistant"), is working with counsel for the defendants and counsel for other individuals whose emails were withheld from production as potentially privileged to determine if any additional emails can be released and to obtain privilege logs. The Government is working to expedite this process and expects it to be completed prior to the next conference on April 3, 2017.

Respectfully submitted,

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Southern District of New York

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cc: Counsel for all defendants (via ECF)

¹ On February 1, 2017, the Government determined that it had produced to the defendants, on January 27, 2017, a set of emails from a single email account that contained potentially privileged communications. The Government has been working with the defendants to ensure that the potentially privileged materials are segregated from review and that the issue is resolved promptly so that the defendants can resume their review of the remainder of the emails from that email account.